

SENATE BILL 2211

By Norris

AN ACT to amend Tennessee Code Annotated, Title 69,
Chapter 3, Part 1, relative to water quality.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 69-3-103, is amended by adding the following subsections in an order necessary to keep all of the subsections in alphabetical order:

() "Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland or stream to heighten, intensify, or improve one or more specific aquatic resource functions. Enhancement results in the gain of certain aquatic resource function, but may also lead to a decline in other aquatic resource function. Enhancement does not result in a gain in aquatic resource area.

() "In lieu fee" means a program through which mitigation is accomplished for a permittee's impacts to waters through payments to a governmental or non-profit organization who uses the funds from one or more permittees to restore or enhance wetlands or streams at one or more locations off the site of permitted impacts in accordance with a plan approved by an interagency review team.

() "Interagency review team" means a committee established pursuant to agreement, comprised of representatives of the department and agencies with permitting authority under section 404 of the federal Clean Water Act or with expertise relevant to this part and section 404, with the purpose of reviewing, providing input, or approving stream or wetland mitigation banks or in lieu fee programs;

() "Mitigation" means compensation for impacts from activities impacting waters. Mitigation can be accomplished with a specific project on or off the site where permitted impacts occur, or through making payments to mitigation banks or in lieu fee programs.

() "Mitigation bank" means a specific location approved by an interagency review team to restore or enhance a wetland or a stream in which some or all of the funds for it are obtained as a result of conditions in an aquatic resource alteration permit issued under this part or section 404 permit; in appropriate circumstances a mitigation bank may also include some areas of preservation or creation of a stream or wetland.

() "Restoration" means the manipulation of the physical, chemical, or biological characteristics of a wetland or stream with the goal of returning natural/historic functions to a former or degraded aquatic resource.

() "Section 404" means 33 U.S.C. §1344.

() "Section 401" means 33 U.S.C. §1341.

SECTION 2. Tennessee Code Annotated, Section 69-3-108, is amended by adding the following new subsection (h) and redesignating the remaining subsections accordingly:

(h) In issuing an individual or a general permit for an activity that will cause alteration of aquatic resources in waters pursuant to subdivision (b)(4) of this section, the commissioner shall impose conditions to avoid or minimize the impacts to waters and to provide mitigation for those impacts that cannot be avoided, based on ratios of the size of the mitigation area to the size of the area of impact, with the goal that no net loss of aquatic resources will occur. Such mitigation may be accomplished through mitigation banks and in lieu fee programs as well as on-site or off-site mitigation by the permittee. In authorizing mitigation to offset impacts, the commissioner shall consider factors relevant to the goal of no net loss, including but not limited to likelihood of success and proximity to the watershed in which the permitted impacts occur.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.